

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 269 of 2006 and Appeal No. 12 of 2007**

Dated the May 23 , 2007.

Present: - Hon'ble Mr. H.L. Bajaj - Technical Member  
Hon'ble Mrs. Justice Manju Goel - Judicial Member

**Appeal No. 269 of 2006.**

M/s. Poddar Alloys (P) Ltd.  
District Pauri Garhwal  
Uttaranchal

.....Appellant

Versus

1. Uttaranchal Electricity Regulatory Commission  
Vasant Vihar Phase-I  
Dehradun.

2. Uttaranchal Power Corporation Ltd.  
Kanwali Road, Dehradun.

.....Respondents

For the Appellant : Mr. M.L. Lahoty, P.K. Sharma and  
Ms. Poonam Lahoty, Advocates.  
Mr. Pawan Aggarwal, Director,  
Sidhballi Steel Ltd.  
Mr. Pawan Kumar Sharma, Advocate

For the Respondents : Mr. M.G. Ramachandran with Mr. Anand K.  
Ganesan, Advocates for UPCL  
Mr. Manmohan, Senior Advocate  
Mr. P.S. Bhullar with Mr. Shashwant Kumar,  
Advocates for UERC.

**Appeal No. 12 of 2007**

Kashi Vishwanath Steels Ltd.,  
Kashipur, Udham Singh Nagar,  
Uttaranchal.

.....Appellant

Versus

1. Uttaranchal Electricity Regulatory Commission  
Vasant Vihar Phase-I, Dehradun.
2. Uttaranchal Power Corporation Ltd.,  
Kanwali Road, Dehradun.

....Respondents

For the Appellant : Mr. Ramji Srinivasan, Advocate  
Mr. Vas Vardhan, ED, for KVS  
Mr. Anuj Aggarwal, Advocate

For the Respondents : Mr. Manmohan, Senior Advocate  
Mr. P.S. Bhullar & Mr. Shashwat Kumar,  
Advocates for UERC  
Mr. M.G. Ramachandran & Mr. Anand K.  
Ganesan, Advocates for UPCL.  
Ms. M.F. Humayunisa, Advocate for IA No.52/07  
In Appeal No. 12/07

**Judgment**

**Per Hon'ble Mr. H.L. Bajaj, Technical Member**

Appeal No. 269 of 2006 filed by M/s Poddar Alloys (P) Ltd. is directed against the order dated November 13, 2006 passed by Uttaranchal Electricity Regulatory Commission (UERC or Commission in short) to the extent it violates the order dated June 2, 2006 passed by this Tribunal. Appeal No. 12 of 2007 filed by M/s Kashi Vishwanath Steels Ltd. is also directed against the same

order dated November 13,2006 passed by UERC to the extent it violates the order dated June 2, 2006 passed by this Tribunal.

2. As both the appeals are directed against the same order of UERC dated November 13, 2006 and also to the extent it violates this Tribunal orders dated June 2, 2006, we are taking both the appeals together.

3. All India Consumer Counsel (AICC in short) Uttaranchal, Dehradun filed an application for impleadment as a party in Appeal No. 12 of 2007 which was allowed by us. AICC is an NGO working from Dehradun and has filed the present application for impleadment in the interest of Non PIIU category of consumers like domestic, agriculture, commercial and small industry consumers. AICC filed IA No. 52 of 2007 wherein it pleaded that the total demand of domestic consumers should have been met from the lowest cost power available to UPCL. This plea being opposed to the judgment of this Tribunal dated 2<sup>nd</sup> June, 2006, now final, the IA No. 52 of 2007 is dismissed.

4. The facts leading to these appeals are briefly stated as under:

5. After creation of new state, the tariff order for Uttaranchal was issued by the UERC on September 08, 2003 for the year 2003-04 prescribing the tariff rates for all HT industries including steel industries. The same tariff rates as were prescribed on September 08, 2003 had to be continued for the year 2004-05.

6. On May 31, 2004 the UPCL filed petition No. 2 of 2004 under Section 62(4) of The Electricity Act, 2003 for amendment of the then prevailing tariff fixed by the order dated September 08, 2003 insofar as it related to PIIU Consumers (only steel units) on the plea that steel units being power intensive, abnormal increase in their demand, which UPCL had projected, would totally distort its anticipated power purchase costs. It was apprehended by UPCL that a large number of steel units were approaching to establish their units in Uttaranchal which would result in deficiency in power availability forcing the UPCL to purchase large quantity of additional energy, beyond state allocation, from Central Sector at higher rate.

7. The UERC vide its order dated August 24, 2004 provisionally accepted the contentions of the UPCL. UERC accepted the statement of the UPCL that demand was likely to be increased from 60 MVA to 310 MVA and it was thus imperative for the UPCL to purchase additional/extra power, beyond state allocation, burdening UPCL with extra/high cost. The UERC observed that normal increase in the total demand for power would not have necessitated amendment in the tariff already approved but considering that as many as 58 applications seeking a load of more than 250 MVA were pending an extraordinary situation was created which could not be met by the present availability of power from the state allocation. Accordingly, the UPCL would have to procure extra power commensurate with the additional requirement over and above the state allocation. This additional power would be available at the additional cost and, therefore, the UERC raised tariff for PIIUs, on provisional

basis, till the other inputs were available, effective from September 01, 2004 to March 31, 2005. The same increased tariff rates, as provisionally formulated on August 24, 2004, were also incorporated in the tariff order dated April, 25, 2005 for the year 2005-06 (from April 01, 2005 to March 31, 2006) on the provisional basis to be finalized on the basis of actual power purchase cost incurred by the UPCL during each half of any financial year.

8. UERC, finalized the provisional tariff rates on October 04, 2005 with higher rates i.e. Rs. 350/- per KVA as demand charges and Rs. 2.35 per kVAh as energy charges. Aggrieved by this order, various appeals ( No.124, 125, 177 of 2005 and 18 of 2006) were filed, inter alia, on the ground that the increase in demand being within normal parameters and the same having been met from the state allocation itself, there was no extra cost incurred by UPCL on account of additional power purchase and, therefore, the UERC committed grave and apparent error by burdening steel units with higher rates of power and amending the rates originally fixed on September 08, 2003.

9. On June 02, 2006 this Tribunal disposed of the appeal Nos. 124 125 , 177 of 2005 and 18 of 2006 accepting the plea of the appellants therein and directing the UERC to review and revise its tariff order dated October 04, 2005 and April 25, 2005.

10. Allegedly, UERC, while formulating the tariff for 2006-07 did not comply with the directions of this Tribunal on the ground that the audited accounts of UPCL for the year 2004-05 and 2005-06 were still not available. Appellant

moved IA No. 120 of 2006 in Appeal No. 177 of 2005 for appropriate orders. UERC filed its reply affidavit which did not indicate the implementation/adherence of the direction given on June 02, 2006 and, therefore, on October 13, 2006 this Tribunal expressed displeasure and annoyance which finally led the UERC to withdraw the said reply affidavit by solemnly undertaking to pass appropriate order implementing the directions of this Tribunal.

11. On November 14, 2006 UERC placed a copy of compliance order dated November 13, 2006 stating therein that the directions of this Tribunal of June 02, 2006 have been complied with. The present appeals are directed against the UERC tariff order dated November 13, 2006.

12. The appellants have sought the following relief:

**Appeal No. 269 of 2006.**

- (1) Set aside the order dated November 13, 2006 to the extent it relates to the violation of the order dated June 02, 2006 passed by this Tribunal;  
or
- (2) In alternative, restore the tariff as was fixed pre August 24, 2004 for steel industries i.e. Rs. 125/ per kVAh as demand charge and Rs. 1.90 per unit as energy charge;
- (3) Direct the concerned respondents to refund/adjust the excess amount recovered by UPCL to the concerned steels units along with appropriate rate of interest.

13. **Appeal No. 12 of 2007**

- (i) Set aside the order dated November 13, 2006 to the extent it violates the order dated June 02, 2006 passed by this Tribunal; or  
In the alternative, restore the tariff as was in existence prior to August 24, 2004 for the steel industry in the state of Uttaranchal i.e. Rs. 125/- per kVAh as demand charge and Rs. 1.90 per unit as energy charge;
- (ii) Direct the respondent/s to refund or adjust the excess amount earlier recovered by UPCL w.e.f. September 01, 2004 under the tariff order dated August 24, 2004 and subsequent orders of April 2005 and thereafter, to the concerned steels units along with interest.

14. Both Mr. M.L. Lahoty, and Mr. Ramji Srinivasan vehemently pleaded before us in their indomitable style that the very procedure and methodology adopted by the UERC in issuing public notice calling for the opinions insofar as the implementation of this Tribunal order dated June 02, 2006 is ex-facie illegal and unwarranted. The judicial propriety demands that when this Tribunal has passed the directions, the same were to be implemented by UERC and, therefore, the public notice inviting comments is against all the canons and discipline and propriety of judicial hierarchy. In this regard learned counsel drew our attention to the relevant excerpts from the Hon'ble Supreme Court

judgment reported in **(2004) 5 SCC: SLP © No....of 2004 (CCs Nos 8071-72 of 2002)**

Tirupati Balaji Developers (P) Ltd. and Others

V/s

State of Bihar and Others

“.....

9. *In a unified hierarchical judicial system which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts. The very fact that the Constitution confers an appellate power on the Supreme Court over the High Courts, certain consequences naturally flow and follow. Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to rehear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of the latter to carry out such directions or show disrespect to or to question the propriety of such directions would – it is obvious – be destructive of*



*the hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both”.*

15. Gravamina of the arguments of appellants are that whereas as per this Tribunal order dated June 02, 2006 UERC was simply to re-determine their tariffs on the basis of the average pooled purchase costs, with T&D loss at 20% and the average administrative expenses, the Commission has not only loaded T&D losses at 38.17% and 34.17% for the given period but has also suddenly and abnormally increased levy of cross subsidy of Rs. 0.85/ kWh and Rs.0.70/ kWh for the respective period on the PIIUs. It was further stated that there was neither any provision nor approval in the tariff order dated October 04, 2005 of any cross subsidy for PIIUs. In fact no order of the UERC or this Tribunal at any stage provided for or permitted imposition of cross-subsidy on the PIIUs. The very concept of cross-subsidy is misunderstood and misapplied by UERC as the cross-subsidy is always utilized when a new tariff is formulated and the reasons in favour of the cross-subsidy are analytically given. The same not being the situation in the present case, the levy of cross-subsidy is out of question. As the very basis of the provisional tariff fixed on August 24, 2004 itself does not exist as the sudden projected 500% abnormal increase in the demand of the PIIUs has not taken place, order of August 24, 2004 and the succeeding orders based on that are unsustainable and consequently the pre August 24, 2004 position re-emerges and, therefore, alternatively the rate leviable on PIIUs may be Rs. 125 per kVAh as demand charge Plus Rs. 1.90 per kVAh as energy charge.

16. Learned counsel also cited judgment of the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission (2002) 8 SCC 715 insofar as it relates to the judgment that the consumers could not be burdened with the entire T&D losses

17. Mr. Lahoti stated that UERC itself, in its provisional order had put the steel units in a separate category and allocated line losses at 20%. At the time of finalisation of the provisional order on October 04, 2005 UERC had also accepted line losses at 20%. Mr. Lahoti reiterated that when UERC was asked to implement this Tribunal order dated June 02,2006 it called for public opinion and has tried to justify its stand to call public hearing for deciding the tariff on PIUs category for the period in dispute. Calling for such public opinion for the implementation of a judicial order being unknown, he recounted that this Tribunal had severely reprimanded the conduct of the UERC. He said that the appellant is shocked that even at this stage, the UERC approach is nothing but an attempt to overreach the directives of this Tribunal order. He stated that in the Impugned Order dated November 13, 2006 UERC contradicting and changing its own stand, has taken the line losses of 38.17% and 34.17% for the years 2004-05 and 2005-06 respectively instead of 20% and that too despite this Tribunal's categorical approval of the UERC's own decision of 20% line losses for the PIUS.

18. Learned counsel for the appellant further stated that the element of cross subsidy now introduced by UERC, was not present in the provisional order and

the tariff order finalized by UERC. He said that steel units have been burdened with higher line losses and additional component of cross subsidy and this has resulted in their tariff being higher even after using average pooled power purchase rate. He also pleaded that as per UERC, there is more recovery of cross subsidy than required. Mr. Lahoti adduced reason in support that as per UERC own findings in their order on ARR and Tariff for FY 2005-06 for UPCL and PTCUL there is a net revenue surplus of Rs. 94.38 crores in 2005-06 and Rs. 97.53 crores in 2004-05. This shows that there is no need for cross subsidy to be imposed on PIIUs during 19 months in dispute i.e. from September 1, 2004 to March 31, 2006 as the refund to be made to the PIIUs in implementation of this Tribunal order is only Rs. 31.92 crores for 2004-05 and Rs. 45.15 crores for 2005-06.

19. Learned senior counsel Mr. Manmohan appearing for the respondent Commission in his suave style endeavoured to justify various actions and inactions of the Commission subsequent to this Tribunal order dated June 02, 2006.

20. We are not at all satisfied with the explanations and reasons given by the learned senior counsel justifying the conduct and manner in which the Commission has tried to over-reach and abort the orders of this Tribunal. This Tribunal has already expressed its anxious concern and anguish vide its order dated November 21, 2006, excerpts from which are given below:

2. *“When action to punish for contempt was initiated and when it was complained to us that the Uttaranchal Electricity Regulatory Commission has failed to implement the directions issued by this*

*Appellate Tribunal in Appeal Nos. 124, 125 & 177 of 2005, after hearing both side liberty was given to the said Commission by our order dated 13<sup>th</sup> October, 2006 to pass appropriate orders by way of implementation of the Judgment in Appeal Nos. 124, 125 & 177 of 2005. On 14<sup>th</sup> November, 2006, Mr. P.S. Bhullar, learned counsel appearing for the said Regulatory Commission, while placing a copy of the order of the Commission dated 13<sup>th</sup> November, 2006 also handed over a copy of the order dated 13<sup>th</sup> November, 2006 to the counsel appearing in these batch of appeals. Mr. Lahoty, the learned counsel appearing for the appellant in this batch, leading the argument requested time to make his submissions. Accordingly, the matters are listed today for hearing.*

- 3. Mr. Lahoty as well as Mr. Amit Bhandari, advocates made their submissions. Mr. P.S. Bhullar, the learned counsel appearing for the Regulatory Commission represented that the Regulatory Commission has passed orders in the manner in which it has understood the Judgment of this Appellate Tribunal. Sufficient time was spent in the hearing and we expressed our displeasure and anguish on the earlier occasion about the way the Regulatory Commission conducted itself.*
- 4. We have given our anxious consideration and expressed our anguish with respect to the manner in which the Commission has conducted itself in the implementation of the Judgment rendered by this Appellate Tribunal and ignoring the same, despite specific directions. Less said is better. Judicial discipline has to be maintained and we restrain ourselves from expressing very strongly with respect to the attitude of the Regulatory Commission in the manner implementation of the Judgment, while at the same time trying to over-reach or get over the judgment of this appellate authority in a calculated design. Attempts to defeat are apparent and the failure to maintain standards of conduct by the Regulatory Commission is equally apparent.*
- 5. In our considered view, the failure on the part of the Uttaranchal Electricity Regulatory Commission to implement the directions issued by this Appellate Tribunal, despite judgment being brought to its notice, deserves to be deprecated. Yet liberty was given to Commission to amend it. However, the Regulatory Commission has not amended itself nor had changed its attitude nor it had kept the minimum standards expected of it.*

6. *An order has since been passed by the Commission on 13<sup>th</sup> November, 2006. We do not propose to express ourselves on the merits of the said order. Even here also, it is rightly commented that the Commission has not conducted itself properly in a manner expected and in fact, it has made up its mind to over-reach the orders of this Appellate Tribunal by a design.*
7. *Hence, once again, we are constrained to deprecate the conduct on the part of the Uttaranchal Regulatory Commission. This will at least send right signals to the said Commission. If the Commission is to conduct itself in such a fashion, we will be constrained to take a serious view to correct the attitude of the Commission.”*

21. It was expected that the Commission will mend its ways. But, regrettably the Commission seems to be determined to dither and defy and over-reach orders of this Tribunal in an indignant manner not becoming of a responsible institution. From the very beginning, when the Commission chose to wait for the Audited Accounts to implement Tribunal's Order, the Commission's intentions and reluctance to implement the order was obvious. That is why the Tribunal had to deprecate the conduct of the Commission. Regrettably, desire to dither on the decided issues and adamant attitude of the Commission remains unchanged. Normally, truing up exercise is undertaken on the basis of available data and information. Second and subsequent truing up exercises can be taken up when audited account figures are available. No public hearing is required for implementing the decisions of an appellate authority and yet the Commission went ahead with public hearing. Any direction made by the higher forum has to be complied with by the lower forum, otherwise, the hierarchy becomes meaningless as has been held by the Supreme Court. We observe that even the minimum standards of behaviour and conduct have been given a go by and that

too despite this Tribunal's reprimand. We restrain ourselves at this stage and expect the Commission to realize its role to implement directions of this Tribunal.

22. Learned senior counsel has brought out two substantive issues pertaining to the T&D loss level and cross subsidy.

**T&D Losses:**

23. Learned senior counsel contended that for re-determination of tariff, the Commission has worked out the cost of supply for steel units by pooling the power purchase cost from all sources and factoring in UPCL's T&D Losses at 38.17% and 34.17% for 2004-05 and 2005-06 respectively as has been done for all categories of consumers. This approach, according to learned counsel, has assured the same average cost of supply for all consumers, including steel units. He contended that this Tribunal had not given any direction to the Commission to the effect that the loss level to be loaded on steel consumers should be less than that for other consumers.

24. Learned senior counsel contended that the appellants are misinterpreting this Tribunal's directions. He pointed out that while determining the tariff for 2003-04 and again for 2006-07 the same approach has been followed and losses for all consumers including steel units have been adopted at the same uniform level.

25. We make it clear that insofar as this Tribunal's order is concerned it is meant for the years 2004-05 and 2005-06 and therefore quoting any other year is out of context and hence not relevant here.

26. On the issue of cross subsidy the learned counsel submitted that the level of cross subsidy worked out by the Commission in the Impugned Order is in accordance with the Act and policies issued thereunder. Learned counsel contended that the Tribunal had in no way directed the amounts of cross subsidy for the tariff for steel units and that it was to be brought out clearly in a transparent manner. The cross subsidy that was being earlier realized indirectly from steel consumers was Rs. 0.95 per unit and Rs. 0.75 per unit for 2004-05 and 2005-06 respectively. In the present approach it has been transparently shown and the same stands reduced to Rs. 0.87 per unit and Rs. 0.70 per unit respectively.

27. Learned senior counsel stated that as per the appellant's interpretation of this Tribunal's directions, the tariff for steel units and other PIIUs would work out to be substantially lower than even the average cost of supply and Steel consumers and PIIUs would then become subsidized consumers, their tariff being subsidized by other consumer like domestic, commercial and industrial consumers. Further, he pleads, tariff for such units would be lower than all other categories of consumers, except BPL and marginally higher than the effective tariff for agricultural consumers. Such an arrangement would defy the rationality. Learned counsel submitted that Section 61 of the Act requires gradual

elimination of cross subsidy and that there are no grounds in law to free the PIIUs from the burden of cross subsidy as yet. Further he says the National Tariff Policy also requires phasing out of cross subsidy in a manner so that by the year 2012, tariff are within plus minus 20% of the average cost of supply.

28. Learned senior counsel for the respondent Commission further submitted that in case it is decided that loss level for steel units should be only 20% because of their voltage of supply similar demands from other HT consumers receiving supply at HT are bound to be made and such demands will have to be accepted for the sake of uniform approach. This would result in refund of huge amounts resulting in creation of substantive revenue gap for the year 2007-08 for the UPCL.

29. Our observations at this stage to the above contention of the Commission is that if the Commission had such an apprehension as stated above it should have immediately appealed against this Tribunal's order of June 02,2006. Having not gone in any appeal and letting this Tribunal's order reach finality, it is not now open for the Commission to put forth such reasons. The appellant had filed an appeal against the Commission's tariff orders of April 25,05 and October 04,05 insofar as the tariff pertaining to them was concerned. This appeal was partly allowed and this Tribunal order was to be implemented insofar as the appeals were allowed for the appellants only and that too for the tariff period specified therein.



30. Learned senior counsel submitted that the issue of utilization of estimated surplus of Rs. 800 crores (of which Rs. 97.53 crores is a part), has already been disposed off by the Tribunal in its judgment dated June 02, 2006 as under:

*“ In view of the explanation given by UPCL, we suggest the appellants to wait for the audited accounts which would anyway have to be reflected in the future ARR and eventually impact their future tariffs accordingly”.*

31. Learned senior counsel stated that this surplus has been validated by the Commission and dealt with in the Tariff Order dated July 12, 2006 and Commission's findings in this connection have been challenged by UPCL before the Appellate Tribunal and decision is awaited. This surplus or surplus for subsequent years as projected at the time of tariff determination cannot be earmarked for or cornered away by a few selected consumers. The benefit of such surplus has to be distributed amongst all consumers who have paid for the power consumed by them during each of such period. In this connection, section 62(6) of The Electricity Act, 2003 is relevant and reproduced below:

*“If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has ;paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee”.*

32. The surplus of Rs. 94.38 crores projected in the tariff order for the year 2005-06 has already been accounted for while determining tariff for the year 2006-07 and is no longer available.

33. The appeals lie in a narrow compass. Vide this Tribunal's order dated June 02, 2006, the Commission was required to re-determine the tariff for the

appellants PIUs in view of this Tribunal's judgment, pertaining to pooled average cost of power purchased, Transmission and Distribution Losses and avoidance of tariff shock to other categories of consumers.

34. At this stage it will be pertinent to set out the following paras of this Tribunal's orders which include decisions on various issues given in its judgment of June 02,2006.

**Para: 17.**

*From a conjoint reading of the aforesaid provisions of the Act, the UERC Regulations and the Tariff Policy, it is evident that tariff is to be worked out on the basis of the 'average cost of supply'. Therefore, we do not find any justification for the Commission for using the highest cost of purchase for a particular category of consumers, namely: PIUs. Therefore, the tariff needs to be re-determined for the period covered by orders dated April 25, 2005 and October 4, 2005.*

**Para-24.**

*In view of the extraordinary circumstances Uttaranchal Electricity Regulatory Commission by its provisional tariff order dated August 24, 2004 tried to diffuse the situation by revising the PIU tariff. However, we are constrained to observe, that this is not in line with the spirit of the Act wherein it is postulated that the cross subsidies have to be transparent and gradually brought down. Using the marginal cost of purchase of power for a particular category of consumers will perennially result in higher tariff for the category and, therefore, cannot be justified. At the same time it is also not the intent of the Act of inflict tariff shock to the consumers.*

**Para-25.**

*In view of the above twin conflicting requirements, better approach would be to determine tariff for PIU category using average pooled cost of purchase and so devise the tariff as to ensure that it does not steeply increase and cause tariff shock to the other categories and transparently brings out the level of subsidy provided. As per the Act cross subsidy has to be progressively reduced and the Commissions are expected to notify a roadmap in accordance with para 8.3 of the Tariff Policy.*

**Para-26.**

*It seems to us that the Commission decided to use the marginal cost of Rs. 2.60 per unit for tariff determination in view of the prevailing extraordinary circumstances in which, if tariff for PIIUs was reduced considerably as compared to the neighbouring states, there might have been influx of PIU consumers on the one hand and on the other hand, tariff shock to the extent of Rs. 1.27 per unit would have been caused to the remaining consumers including domestic rural consumers. But neither The Electricity Act, 2003 nor the Commission's own Regulations notified on June 15, 2004 support such an action of the respondent Commission. We therefore, direct the Commission to review and revise its tariff orders dated October 4, 2005 and April 25, 2005 adopting the approach of using pooled average cost of power purchased from all sources for all categories of consumers. Simultaneously, it should also ensure that no tariff shock is caused to any consumer in line with the spirit of The Electricity Act, 2003. Subsidy element needs to be succinctly brought out in a transparent manner. This exercise may be carried out along with truing up during the next tariff revision.*

**Para-27.**

*Having dealt with the main issue of determination of tariff, we now turn to the following points raised by the appellants:*

- (i) Was the Commission justified in revising the earlier Tariff Order dated September 8, 2003 which was valid only up to March 31, 2004 and no longer in existence and hence expired, by order dated August 24, 2004?*
- (ii) Whether the Tariff order dated the September 8, 2003 cannot be amended second time by the Commission as done vide order dated August 24, 2004 for seeking an amendment in tariff for PIIUs only?*
- (iii) Was it necessary for UPCL to file the entire ARR for the year 2004-05?*
- (iv) Can the PIIUs be categorized as a separate class from other H.T. Industries*
- (v) Is the transmission and distribution loss level of 20% for PIIUs consumers far too high and should it be in the range of 1%?*
- (vi) The PUCL has not furnished details of utilization of surplus amount of Rs. 800 crores.*

**Para-28.**

We now deal with the various contentions of the appellants listed in para 27 above.

(i) Was the Commission justified in revising the earlier Tariff Order dated September 8, 2003 which was valid only up to March 31, 2004 and no longer in existence and hence expired, by order dated August 24, 2004?

(a) .....

(b) .....

(c) .....

(d) In view of the foregoing we conclude the tariff order remained in force beyond March 31, 2004 until amended by order dated August 24, 2004.

(ii) Whether the Tariff Order dated the September 8, 2003 cannot be amended second time by the Commission as done vide order dated August 24, 2004?

(a) .....

(b) .....

(c) We agree with the explanation of the respondent and find that there is nothing irregular in Commission's amendment order dated August 08, 2004 as far as Section 62(4) is concerned.

(iii) Was it necessary for UPCL to file the entire ARR for the year 2004-05 for seeking an amendment in tariff for PIIUs only.

(a) .....

(b) .....

(c) We also note from the Annexures 1&@ to the UERC order dated August 24, 2004 that PIIUs, including the appellants were duly heard by UERC before issuing the amendment to the tariff. UERC finalized the amendment order dated August 24, 2004 after a petition filed by one of the appellant and 11 others. In view of this we are of the opinion that the appellants should have no grievance on account of non-submission of the entire ARR by UPCL

(iv) Can the PIIUs be categorized as a separate class from other H.T. Industries?

(a) .....

(b) .....

- (c) .....
- (d) .....
- (e) .....
- (f) *After careful consideration of the views and arguments of both sides we agree with the Commission that the steel units can be placed as a separate category.*

(v) *Is the transmission and distribution loss level of 20% for PIIUs consumers far too high and should it be in the range of 1%?*

(a) *Appellant have submitted that the T&D loss for PIIUs is less than 1% in comparison to the total system loss level of 45.17% in the state. In this regard they have also submitted an affidavit in respect of a particular 33 kV feeder loss level. UPCL have also submitted an affidavit dated January 13, 2006 showing the technical loss level in the transmission system of the state of Uttaranchal in the region of 4.5% upto 132 kV transmission line. This figure of 4.5% does not include the loss level in 33 kV line. UPCL asserted that the total loss in the entire distribution system, as per the affidavit, will be 35.93% including the intra-state transmission loss.*

(b) *We have observed from the Commission's order dated August 24, 2004 at para 4.2.1 that it recognized the fact that loss is not the same for all categories of consumers and the current energy loss is due to pilferage euphemistically called commercial loss. Ideally, the cost of such commercial loss should be recoverable from the consumers or group of consumers causing it.*

(c) *The Commission, in its order has stated that unfortunately the loss data is neither precise nor consumer or category-wise to enable category-wise allocation of loss. Commission in its tariff order dated September 08, 2003 had directed the licensee to develop and furnish detailed information on losses which was still awaited at the time of issuance of order dated August 24, 2004. We note that under these compelling circumstances, the Commission had assumed loss level of 20% for PIIUs consumers, which in Commission's view, was generous. Even at the stage of issuance of impugned order dated October 4, 2005, the loss level of 20% for PIU consumers has been maintained.*

(d) *In our view, appellant's contention that loss level is just 1% is not sustainable at all. The loss level in the system from the point of purchase to the consumer premises, is what is relevant and not only loss in the 33 kV feeder. UPCL has to pay for the energy purchased at the point of purchase and all system, including 400 kV, 220 kV, 132 kV, 33 kV lines, transformation losses have to be*

*taken into account and paid for by UPCL. To enable the Commission to use category-wise loss data for determining cost of supply for the concerned category, UPCL must furnish the data to the Commission in its future filings of ARR.*

- (e) *The Commission, in the absence of precise category-wise data has, according to its estimation, assumed a loss level figure of 20%. We do not intend to interfere in this decision of the Commission as, in the absence of required category-wise loss data it has kept the interests of both the appellants and the UPCL in mind.*

**Para-29**

*In the result, we partly allow the appeals to the extent indicated above and direct as follows:*

- “ (a) The Commission while carrying out the truing up exercise during the next tariff revision shall re-determine the tariff for PIUs on the basis of pooled average cost of power purchased from all sources for all categories of consumers for the period covered by the orders dated April 25, 2005 and October 04,2005*
- (b) The effect/benefit of the truing up exercise shall be given to the appellants in the next tariff revision.*
- (c) While re-determining the tariff the Commission shall ensure that no tariff shock is caused to any other category of consumers in consonance with the spirit of The Electricity Act, 2003 and the Tariff Policy.”*

35. From the aforementioned excerpts from this Tribunal's 2<sup>nd</sup> June, 2006 Judgment, it can be seen that the Tribunal has mostly agreed and endorsed the Commission's views on various contentions of the appellants including loss level of 20%. We are quite intrigued that whereas the Commission itself had decided that the transmission and distribution losses for PIUs are 20% and the same had been upheld by this Tribunal, how the Commission can now take a different stand, alter its own decision and use higher figure of the T&D losses corresponding to the road map laid out by UERC for UPCL for reduction of overall T&D losses for UPCL as a whole. In determining the cost to supply at

the consumers premises UERC was required to take into account the line losses up to the PIIUs premises which had been determined by it considering losses @ 20% and upheld by this Tribunal but, admittedly, have not used at all by the Commission in redetermination of tariff.

36. The entire order of the Tribunal has to be implemented by a conjoint reading of the various rulings given in the order in their entirety. In its tariff orders dated April 25, 2005 and October 4, 2005, UERC had already used the loss level figure of 20% in determination of tariff for PIIUs. It is not for academic interest that this Tribunal approved the 20% loss level, it must be reflected in the redetermination of tariff for PIIUs.

37. As far as the cross subsidy element is concerned, this Tribunal had left it to the judgment of the Commission and it was for the Commission to adjudge the requirement and amount of cross subsidy based on the likely impact and resulting tariff shock, if any, due to the downward revision of tariff of PIIUs on the other subsidized category of consumers. We had not approved of the Commission's approach to recover cross subsidy element from PIIUs through back door by using the highest rate of power purchase. We recognize that when cross subsidy is being charged from other industrial consumers, the PIIUs cannot escape this element of cross subsidy which is required to maintain a reasonable tariff level for the subsidized consumers. It is a matter of fact that cross subsidies did find a place in determination of tariff for industry other than PIIUs despite there being surplus revenue during 2004-05 and 2005-06 as brought by the appellants.

38. In view of the above we do not wish to interfere with the decision of the Commission with regard to cross subsidy of Rs. 0.87 per unit and Rs. 0.70 per unit for the years 2004-05 and 2005-06 respectively for the PIUs.

39. At this juncture we would like to remind the Commission that they need to notify the road map with the target milestones to ensure that latest by the end of the year 2010-11, tariffs are within plus minus 20% of the average cost of supply. The road map is required to have the intermediate milestone based on the approach of a gradual reduction in cross subsidy.

40. In the result, on a consideration of the entire matter, we allow the appeal to the extent indicated herein above. We remand the issue of redetermination of tariff for PIUs, within four weeks of this order, to the Commission for the period September 1, 2004 to March 31, 2005 and the year 2005-06, inter alia, utilizing:

- i) Pooled average cost of power purchased.
- ii) T&D losses of 20%
- iii) Subsidies of Rs. 0.87 per unit and Rs. 0.70 per unit for the years 2004-05 and 2005-06 respectively.

Respondent UPCL shall refund the excess amount recovered by it to the appellants and other concerned steel units by adjustments in next eight monthly bills starting from August, 2007.

**(Mrs. Justice Manju Goel)**  
**Judicial Member**

**(H.L. Bajaj)**  
**Technical Member**